

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

NORVELL T COLEMON
doing business as
Agape Development,

Plaintiff,

v.

Case No. 05-C-658

MARSHAL & ILSLEY BANK and
MOUNT PLEASANT POLICE DEPARTMENT,

Defendants.

ORDER

On June 17, 2005, plaintiff Norvell T. Coleman, a prisoner in the Wisconsin State Prison System, filed a pro se complaint against Marshal & Ilsley and the Mount Pleasant Police Department, along with a petition to proceed in forma pauperis. Pursuant to 28 U.S.C. § 1915, Coleman was ordered to pay an initial partial filing fee of \$7.00 within 21 days. He later requested and was granted an extension until August 4, 2005, to pay the initial filing fee. When the fee remained unpaid even after that time, the case was ordered dismissed without prejudice. Coleman has now filed with the court a request to reopen the case. Notwithstanding this request, however, Coleman has still failed to pay the initial partial filing fee.

Coleman's request will be denied. His request to reopen is really a request for relief from a judgment or order which is governed by Rule 60 of the Federal Rules of Civil Procedure. In order to be granted such relief, Coleman would have to establish a basis for granting it, such as mistake,

inadvertence, surprise or excusable neglect. He has provided none. Accordingly, he is not entitled to the relief he seeks.

This is not to say, however, that Coleman cannot file a separate lawsuit. The earlier dismissal was without prejudice, which means he is free to commence a new action and seek leave to proceed in forma pauperis. Should he do so, the court will compute a new partial filing fee based upon his present earnings and account status, but that would be a separate issue from whether he is entitled to reopen the above action. For the reasons already set forth, I conclude that he is not. Accordingly, the motion is denied.

SO ORDERED this 11th day of July, 2006.

s/ William C. Griesbach
William C. Griesbach
United States District Judge